

REMARKS

The Examiner has withdrawn the previous grounds of rejection of the claims in view of the Pre-Appeal Brief Request for Review that Applicants filed on May 20, 2009. In this Office Action dated September 1, 2009, the Examiner has issued new rejections of the pending claims. In particular, the Examiner has rejected Claims 31-34, 38-40 under 35 USC § 101 as being directed to non-statutory subject matter. The Examiner has rejected Claims 5, 7-9, 14-17, 19-20, 31-40, and 45-61 under 35 USC § 112, Second Paragraph as being indefinite. The Examiner has further rejected 1-2 and 11-12 are rejected under 35 U.S.C. § 102(e) as being unpatentable over a newly cited reference to Haggar et al. (U.S. 2003/0135658) (“Haggar”). The Examiner has further rejected Claims 1-2, 11-12, 48-53 and 55-60, under 35 USC § 103(a) as being unpatentable over a newly cited reference to Shultz et al. (U.S. 7,181,744) (“Schultz) in view of Applicant Admitted Prior Art (AAPA), and Claims 41-47 under 35 U.S.C. § 103(a) as being unpatentable over the previously cited reference to Macchiano et al. (U.S. 7,111,303) (“Macchiano”) in view of AAPA. Applicants traverse the rejections.

In this response, in an effort to advance the prosecution of the application to allowance as quickly as possible, and without admitting the propriety of the rejections, Applicant has amended Claims 5, 7, 8, 9, 11, 15, 17, 18, 19, 31-40, 45, 47, 49, 50, 51, 52, 54, 56, 57, 58, 59 and 61 to clarify the subject matter that Applicants regard as the invention. Claims 21-30 were previously canceled without prejudice. Applicants respectfully request reconsideration of remaining pending Claims 1-20 and 31-61 in view

of the amendments to the claims and arguments as set forth in detail in the following remarks.

CLAIM REJECTIONS – 35 U.S.C. § 101

Claims 31-34, 38-40 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Applicants have amended the claims rendering their rejection under Section 101 moot. For example, among other amendments, Applicants have amended the claims to recite a “computer-implemented” system. Applicants respectfully request the withdrawal of the rejections.

CLAIM REJECTIONS – 35 U.S.C. § 112 – Second Paragraph

Claims 5, 7-9, 14-17, 19-20, 31-40, and 45-61 are rejected under 35 U.S.C. § 112, Second Paragraph as being indefinite. Applicants have amended the claims rendering their rejection under Section 112 moot. Applicants respectfully request the withdrawal of the rejections.

CLAIM REJECTIONS – 35 U.S.C. § 102

Claims 1-2 and 11-12 are rejected under 35 U.S.C. § 102(e) as being unpatentable over the newly cited reference to Haggar. Applicants traverse the rejection. Haggar discloses technology for Java Virtual Machine (JVM) processes to use inter-process communication (IPC) to access shared class memory areas. The shared class memory areas are used to avoid creating duplicate class definitions that occur when loading system classes that may already have been loaded by other JVM processes. There is nothing in Haggar that indicates that the shared class memory area is the same as a shared

physical memory element as recited in Claims 1-2 and 11-12, or that such memory is being used to transmit or receive data between processes as recited in the Claims 1-2 and 11-12.

In particular, there is nothing in Hagggar that discloses *detecting* that a first virtual machine is *attempting to transmit data to a second virtual machine*, mapping *transmitting* and/or *receiving* elements to the shared physical memory element, *placing data from the first virtual machine into the shared physical memory element via the transmitting memory element*, or *receiving the placed data from the shared physical memory element into the second virtual machine via the receiving memory element*, as recited in Claim 1. Rather, the shared class memory area holds class definitions that originated from a class library, such as a class library stored on disk storage, which is separate from the JVM processes, and are not data that is placed or transmitted or received into or from the JVM processes.

The Examiner is reminded that to anticipate a claim, a single prior art reference must show each and every element of the claim. The Hagggar reference fails to show each and every element of Claims 1-2 and 11-12; accordingly, Applicants request the withdrawal of the rejection of Claim 1-2 and 11-12 under Section 102.

CLAIM REJECTIONS – 35 U.S.C. § 103

Claims 1-2, 11-12, 48-53 and 55-60 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the newly cited reference to Shultz in view of AAPA. Applicants traverse the rejection. Shultz discloses virtual machines that write and read directly to/from shared memory space instead of copying data from a sender's virtual address

space to a receiver's virtual address space. (See, Shulz, Col. 5, Lines 4-24). As such, there is nothing in Shultz that discloses *mapping transmitting* and/or *receiving* elements to the *shared physical memory element*, placing data from the first virtual machine into the shared physical memory element *via the transmitting memory element*, or receiving the placed data from the shared physical memory element into the second virtual machine *via the receiving memory element*, as recited in Claim 1.

In making this rejection, the Examiner is attempting to base his argument of obviousness on a modification of a single reference, namely the modification of the Shulz reference. The Examiner concedes that Shulz does not explicitly teach mapping a receiving element of the second virtual machine to a shared physical memory element. But the Examiner concludes that "[i]t would have been obvious to one of ordinary skill in the art to modify Shulz to teach mapping a receiving element of the second virtual machine to a shared physical memory element" because "one would be motivated by the desire to ensure that the data to be transferred would be addressed appropriately as opposed to being written into an arbitrary location." (Office Action dated 9/1//2009, Page 10, Para no. 17). Applicant disagrees, and submits that the Examiner's conclusion is, at best, an impermissible hindsight influenced by knowledge of the Applicant's disclosure, and is not properly based on the prior art.

For at least the above reasons, Applicant submits that the Examiner has failed to establish a *prima facie* case of obviousness. As noted in the Manual of Patent Examining Procedure ("MPEP"), [t]he key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in KSR International Co. v. Teleflex Inc., 550 U.S. ___, ___, 82

USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Federal Circuit has stated that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." In re Kahn, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also KSR, 550 U.S. at ___, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval). MPEP §2142 Legal Concept of *Prima Facie* Obviousness.

For at least these reasons, Applicants respectfully request that the Examiner withdraw the rejection of Claims 1-2 and 11-12, as well as the rejections of Claims 48-53 and 55-60, which contain limitations analogous to those present in Claims 1-2 and 11-12.

Claims 3-10, 13-20, 31-40, 54 and 61 are similarly rejected under 35 U.S.C. § 103(a) as being unpatentable over Shultz in view of AAPA. Applicants traverse the rejections and respectfully request the withdrawal of the rejections for the same reasons as set forth above for Claims 1-2 and 11-12, and Claims 48-53 and 55-60, from which Claims 3-10, 13-20, 54 and 61 variously depend. Claims 31-40 contain limitations analogous to those contained in Claims 1-20 and Claims 48 - 61 and are allowable for at least the same reasons.

Claims 41-47 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Macchiano in view of AAPA. Applicants traverse the rejection and respectfully request the withdrawal of the rejection. With regard to the arguments in support of the rejection of Claims 41-47, Applicant again observes that the Examiner is equating the virtual LAN disclosed in Macchiano with the first direct memory access (DMA) buffer recited in the claims. The Examiner again argues that "the virtual LAN is *equivalent* to a direct

memory access buffer in that it acts as a medium to allow the sending and retrieval of transmitted data.” (Office Action, 9/1/2009, Page 22, Para. No. 65, Office Action dated 7/31/2008, Page 12, Para No. 39). Applicant again disagrees.

As noted previously, the Examiner’s argument is conclusory, at best, and lacks support in the art of record. The Federal Circuit has stated that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." In re Kahn, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also KSR, 550 U.S. at ___, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval). MPEP §2142 Legal Concept of *Prima Facie* Obviousness. In particular, the Examiner’s argument still does not address the failure of either the AAPA or Macchiano to disclose the use of direct memory access buffers as recited in Claim 41. For at least this reason, Applicant submits that Claims 41-47 are patentably distinguishable over the cited and applied art of record, and requests the withdrawal of the rejection of Claims 41-47.

CONCLUSION

For at least the foregoing reasons, Applicants submit that the rejections have been overcome. Therefore, claims 1-20 and 31-61 are in condition for allowance and such action is earnestly solicited. The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present application. Please charge any shortages and credit any overcharges to our Deposit Account number 02-2666.

Respectfully submitted,
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December 1, 2009
Date

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